

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Irby Gene Dewitt,	)	C/A No.: 9:13-cv-02064-TLW
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Warden Cruz,	)	
	)	
Respondent.	)	
	)	

**ORDER**

On July 29, 2013, Irby Gene Dewitt (“Petitioner”) filed a §2241 Petition for a Writ of Habeas Corpus. (Doc. # 1). The matter now comes before this on Petitioner’s Motion to Supplement his § 2241 petition, (Doc. #19), and for review of the Report and Recommendation (“Report”) filed by Magistrate Judge Bristow Marchant, (Doc. #15), to whom this case was previously assigned. In the Report, the Magistrate Judge recommends that Petitioner’s Petition for a Writ of Habeas Corpus be dismissed *without prejudice* and without requiring the respondents to file a return. (Doc. # 15). Objections were due by January 3, 2014. Petitioner has filed no objections to the Report. For the reasons described below, the Court denies the motion to supplement and accepts the Magistrate Judge’s Report.

**Motion to Supplement**

Regarding the Petitioner’s motion to supplement his §2241 petition, the Court finds that a supplemental pleading would be futile. See Franks v. Ross, 313 F.3d 184, 193, 198 n.15 (noting that a motion to amend under Rule 15 of the Federal Rules of Civil Procedure should be denied when the amendment would be futile, and noting that the standard for Rule 15(d) motions to

supplement is nearly identical). Specifically, in the Motion to Supplement, Petitioner states that he wishes to add to his §2241 motion a claim that the Government did not prove that Petitioner had foreknowledge of his codefendant's intent to use a firearm. However, at his guilty plea, the Petitioner specifically admitted to the Court that he knew the gun was going to be used in the robbery. Thus, the Court finds that the motion to supplement should be denied.

### **Report and Recommendation**

This Court is charged with conducting a de novo review of any portion of the Magistrate Judge's Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C. § 636. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4<sup>th</sup> Cir. 1983).

### **Conclusion**

This Court has carefully reviewed the Motion to Supplement and the Magistrate Judge's Report and Recommendation. For the reasons articulated herein, Petitioner's Motion to Supplement, (Doc. #19), is **DENIED**. In addition, for the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report and Recommendation, (Doc. # 17), is **ACCEPTED**, and Petitioner's Petition for a Writ of Habeas Corpus, (Doc. # 1), is **DISMISSED** without prejudice and without requiring the respondent to file a return.

**IT IS SO ORDERED.**

s/Terry L. Wooten  
Chief United States District Judge

May 19, 2014  
Columbia, South Carolina